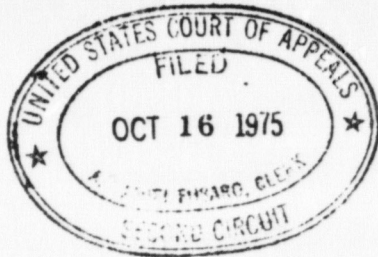


***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**



75-7326

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

OCT 16 1975

STANLEY V. TUCKER,
Plaintiff-Appellant

-v-

No 75-7326

THOMAS E. MESKILL, et al

Defendant-Appellees

APPELLANT'S REPLY BRIEF TO RESPONDENTS
SENATOR STANLEY H. PAGE AND
REPRESENTATIVE HOWARD A. NEWMAN

Appeal from Final Judgment Entered on
Motions To Dismiss on July 23, 1975

HONORABLE T. EMMET CLARIE
TRIAL JUDGE

STANLEY V. TUCKER
APPELLANT/PLAINTIFF
Box 35
Hartford, Conn 06101

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INTRODUCTION TO REPLY BRIEF

There is limited agreement between Appellant and Appellees where Appellees P 13 of brief state....."That issue can be resolved by a trial between the private litigants, an action to which these defendants need not be parties." Appellant agrees that the action should be returned to the lower court for trial but contends all defendant/ Appellees should remain in the action because the Appellees fail to controvert powerful argument based on recent cases in the UNITED STATES SUPREME COURT holding that a trial on the merits is in order where allegations of willful and wanton actions causing injury are levied in a complaint against state officers.

Most important the Appellees brief fails to treat the impact of newly enacted Conn Public Act 73-498, General Statutes 52- 604 through 609, "Uniform Enforcement of Foreign Judgments Act". Continued study of this act by this Appellant leads to belief that this act applied retrospectively and prospectively would invalidate the liens of the California defendant/appellees as well as curing the constitutional deficiencies of Conn G. S. 49-54 complained of in this action and the deficiencies of 28 USC 1963 as briefed in Appellant's Brief.

A careful review of Public Act 73-498 by this court could clarify the impact of that legislation to give the state Senator and Representative immunity only if PA 73-498 cured the constitutional deficiencies complained of. In the alternative this Court could reverse and remand for further proceedings before a properly convened Three-judge district Court as to the impact of P. A. 73-498 on the matters complained of in this action.

ARGUMENT

I. BOTH FEDERAL AND STATE CITATIONS CONSISTENTLY HOLD THAT THERE MUST BE A TRIAL BASED ON THE ALLEGATIONS OF THE COMPLAINT HEREIN.

Appellees have not refuted the powerful argument in Appellant's Brief heavily relying on federal cases, Scheuer v Rhodes, 416 US 232, and U. S. V Nixon, 94 S Ct 3090, as applied to state law propounded in recent State Court Cases Kagan v King - Hartford Superior Court No 189957, and Horton v Meskill - Hartford Superior Court No 185283.

At best Appellees misquote the key cases or dis-regard the powerful major thrust of these decisions.

This evasion of the key thrust of decisions is most clearly seen on Page 11 of Appellee's brief in reference to Kagan v King, supra:

"This case by no means eliminates legislative immunity"

The all important thrust of Kagan v King is clearly seen in the final paragraph of Judge Shea's Opinion Page K 5 of the Appendix:

"The complained of conduct in this case includes a period before any legislation regarding ambulance service was pending..... Under such circumstances, the court holds that the immunity clause does not preclude the suit in question"

II. ONLY A HOLDING BY THIS COURT THAT PA 73-498 IS
APPLICABLE RETROSPECTIVELY AND PROSPECTIVELY
WOULD SAVE THE IMMUNITY OF THE STATE LEGISLATORS

Under the rules propounded in Scheuer v Rhodes this Court must remand for a trial as to damages against the state legislators unless THEY PERFORMED LEGISLATIVE ACTS RELEVANT TO THE MATTERS COMPLAINED OF. The rule announced in King v Kagan, consistent with all known state and federal cases, most clearly announced applicable to facts of this action involves a careful scrutiny as to whether "legislative acts" relevant to the complaint were performed by the state legislators.

Unfortunately the Brief of the Appellees is stark barren as to this crucial point.

There is no doubt but that under Conn law and federal law (see Appellant's Brief P 19) cases cited hold that the new statute fully amends contradictions or inconsistencies in prior statutes. See McAdmans v Barbieri 143 Conn 405.

This court need not search for inconsistencies between the two statutes because there are none. P. A 73-598 merely fills in the constitutional blanks or voids in G. S. 49-44 complained of herein.

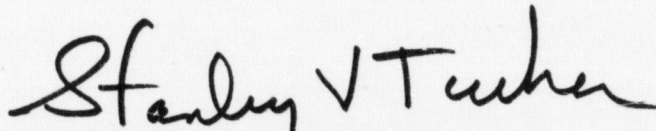
The all important question is that a retrospective application of p PA 73-498 automatically gives the State Officer Appellees the "immunity" that at this times does not appear in the record nor in their brief.

CONCLUSION

This Honorable Court is asked to make a threshold decision if on the basis of P. A. 73-498 the deficiencies of G. S. 49-44 are cured, and if so, to then grant the state officer appellees immunity.

If the record is inadequate for this determination on the strength of Maggott v Norton, 2nd C. A. No 74-2670 This Court is asked to remand for proper proceedings before a Three-Judge District Court.

Respectfully Submitted:

A handwritten signature in cursive script, reading "Stanley V. Tucker". The signature is written in dark ink and is positioned above the printed name and title.

STANLEY V. TUCKER
APPELLANT

CERTIFICATE OF SERVICE BY MAIL

I, STANLEY V. TUCKER, hereby certify that on the 13th day of October 1975 I served the within document, Appellant's Reply Brief to Senator Page and Representative Newman on the Appellees herein by mailing 2 true copies thereof postage prepaid by depositing in the U. S. mails at Hartford affressed as follows:

JAMES A. WADE
799 Main Street
Hartford, Conn 06103

October 13th, 1975 at Hartford, Conn.

By Stanley V. Tucker
STANLEY V. TUCKER